# Office of Chief Counsel Internal Revenue Service

## memorandum

CC:LM:FSH:MAN:TL-N-4177-00

MBalachandran

date:

to: SBSE, Group 4, Territory 2, Manhattan Compliance

Attn: Revenue Agent Carl Perrera

from: Area Counsel (LMSB:FSH)

subject: Supplement to September 20, 2000 memorandum

Form SS-10 (Tax Years , and and

Consent to Extend the Statute of Limitations on Assessment

STATUTE OF LIMITATIONS EXPIRES

UIL Nos. 6501.08-00

6501.08-10

6501.08-17

EIN Nos.

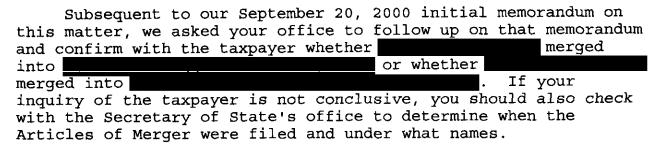
#### DISCLOSURE STATEMENT

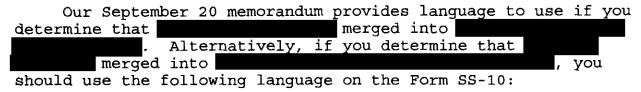
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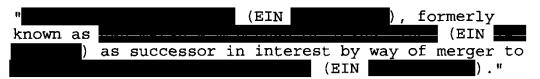
#### Background

Please refer to our September 20, 2000 memorandum for the facts and discussion in this case. The remainder of this memorandum supplements that September 20 memorandum.

#### Supplemental Discussion







The EIN of \_\_\_\_\_\_ (EIN \_\_\_\_\_) should be entered in the upper right hand corner of the Form SS-10.

#### Notification to taxpayer

Please note that Section 3461 of the IRS Restructuring and Reform Act of 1998, codified in Section 6501(c)(4)(B), requires the IRS to advise taxpayers of their right to refuse to extend the statute of limitations on assessment, or in the alternative to limit an extension to particular issues or for specific periods of time, each time that the Service requests that the taxpayer extend the limitation period. To satisfy this requirement, you may provide Pub. 1035, "Extending the Tax Assessment Period," to the taxpayer when you solicit the Form SS-10. Alternatively, you may advise the taxpayer orally or in some other written form of the IRC Section 6501 requirement (such as Letter 907).

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Regardless of which method you use to notify the taxpayer, you should document your actions in this regard in the case file. Although section 6501(c)(4)(B) does not provide a sanction or penalty on the Service for failure to comply with the notification requirement, a court might conclude that an extension of the statute of limitations is invalid if the Service did not properly notify the taxpayer. Thus, it is important to document your actions in this regard in the case file.

ROLAND BARRAL Area Counsel (LMSB:FSH)

By:

PETER J. LABELLE Associate Area Counsel

## Office of Chief Counsel Internal Revenue Service

### memorandum

CC:NER:MAN:TL-N-4177-00 MBalachandran

date:

to: Chief, Examination Division, Manhattan
Attn: Revenue Agent Carl Perrera, Group 1352

from: District Counsel, Manhattan (CC:NER:MAN)

subject:

Form SS-10 (Tax Years , and and

Consent to Extend the Statute of Limitations on Assessment

STATUTE OF LIMITATIONS EXPIRES

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#### INTRODUCTION

This memorandum is in response to your request for advice in the above-captioned matter. Specifically, you have asked our office to review a Form SS-10 (Consent to Extend the Time to Assess Employment Taxes) executed on behalf of , for the taxable years and . You have

also asked us to advise on the correct name to use for an

extensi										SS-10 wo	
extend t	the	sta	ıtute	of	limitat:	Lons	on	assess	ment	through	

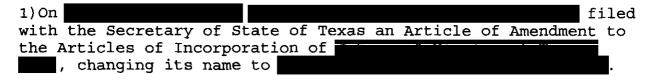
#### <u>ISSUES</u>

- Which entity is the proper entity to execute a Form SS-10 for for the pre-merger tax years? 1.
- What specific language should be used on the Form SS-10 2.

for the pre-merger tax years?	U
FACTS	
Merger	
From the documents you have supplied it is not clear whethe merged into (" ") or into .	r
On the one hand, the Form 1120 information supplied by the taxpayer pursuant to regulation section 1.368-3 states that on . (EIN	1
On the other hand, the "Joint Unanimous Written Consent of Board of Directors and Sole Shareholder" of , states that consent is given to the merger of	
into .	
You have informed us that when questioned about the above, the taxpayer's representative informed Revenue Agent Perrera that the written consent of the shareholders and the board was sought after the merger was effected and was pro forma since there was one shareholder who was common to both corporations. Thus, it appears that  on merged into but that by the time the merger was approved, as described below, had changed its name to	ت ا

#### Name Changes

Subsequent to the merger, the corporation underwent two name changes:



2)On filed with the Secretary of State of Texas an Article of Amendment to the Articles of Incorporation changing its name to

#### DISCUSSION

As a preliminary matter, we recommend that you pay strict attention to the rules set forth in the IRM. Specifically, IRM 4541.1(2) requires use of Letter 907(DO) to solicit the extension, and IRM 4541.1(8) requires use of Letter 929(DO) to return the signed extension to the taxpayer. Dated copies of both letters should be retained in the case file as directed. When the signed extension is received from the taxpayer, the responsible manager should promptly sign and date it in accordance with Treas. Reg. § 301.6501(c)-1(d) and IRM 4541.5(2). The manager must also update the statute of limitations in the continuous case management statute control file and properly annotate Form 895 or equivalent. See IRM 4531.2 and 4534. This includes Form 5348. In the event an extension becomes separated from the file or lost, these other documents would become invaluable to establish the agreement.

# 1. Which entity is the proper entity to execute a Form SS-10 on behalf of the pre-merger tax years?

In general, the statute of limitations on assessment expires three years from the date the tax return for such tax is filed. I.R.C. § 6501(a). However, the Secretary and the taxpayer may consent in writing to an agreement to extend the statute of limitations on assessment. I.R.C. 6501(c)(4). For employment taxes, the form used by the Service to extend the limitations period on assessment is Form SS-10 (Consent to Extend the Time to Assess Employment Taxes).

Unlike the income tax liability of a consolidated group, where, as a general rule, the common parent acts as sole agent for each member of the group, each member of a consolidated group must act on its own behalf with respect its own employment tax

liabilities. <u>See</u> I.R.C. § 1501 and the regulations thereunder. Each member is, therefore, responsible for entering into its own consent to extend the statute of limitations with respect to its employment tax liabilities. In the case of a merged corporation, the surviving or resulting corporation in a merger under state law may validly sign an extension agreement on behalf of the transferor (predecessor) corporation for a period before the transfer. Rev. Rul. 59-399, 1959-2 C.B. 499; <u>See also Popular Library Inc. v. Commissioner</u>, 39 T.C. 1092 (1963); <u>Union Bleachery v. Commissioner</u>, 97 F.2d 226 (4<sup>th</sup> Cir. 1938).

#### Merger

It is our understanding that both and were corporations formed under Texas law. Thus, they are governed by Texas law. The Texas Business Corporation Act states the following with regard to the "Effect of Merger or Share Exchange"

#### A. When a merger takes effect:

(3) all liabilities and obligations of each domestic or foreign corporation and other entity that is a party to the merger shall be allocated to one or more of the surviving or new domestic or foreign corporations and other entities in the manner set forth in the plan of merger, and each surviving or new domestic or foreign corporation, and each surviving or new other entity to which a and other entity that is a party to the merger shall be allocated to one or more of the surviving or new domestic or foreign corporations and other entities in the manner set forth in the plan of merger, and each surviving or new domestic or foreign corporation, and each surviving or new other entity to which a liability or obligation shall have been allocated pursuant to the plan of merger, shall be the primary obligor therefor and, except as otherwise set forth in the plan of merger or as otherwise provided by law or contract, no other party to the merger, other than a surviving domestic or foreign corporation or other entity liable thereon at the time of the merger and no other new domestic or foreign corporation or other entity created thereby, shall be liable therefor. Tex. Bus. Corp. Act art. 5.06.

We have not been provided with any reason to doubt that the merger was properly effected. Under the terms of the merger, (later known as assumed all the liabilities and performance obligations of See,

Board resolution and adoption of that resolution by the shareholder of . Thus, subsequent to the merger, the appropriate party to sign the SS-10 would have been .

#### Name Change

The Articles of Amendment resulting in the two name changes were apparently completed pursuant to appropriate Texas law. See, Tex. Bus. Corp. Act art. 4.04. The amendment to the Articles of Incorporation do not state that they affect any provision other than the name. Therefore the obligations relating to

flow through to and finally onto

#### Officer to execute the SS-10

The Form SS-10 should be executed by the president, vice-president, treasurer, assistant treasurer, chief accounting officer or any other officer duly authorized to act on behalf of <a href="Mailto:See">See</a> Rev. Rul. 83-41, 1983-1 C.B. 399, <a href="Clarified and amplified">Clarified and amplified</a>, Rev. Rul. 84-165, 1984-2 C.B. 305.

2. What specific language should be used on the Form SS-10 for \_\_\_\_\_\_, for the premerger tax years?

The name of the entity on the SS-10 extending the Statue of Limitations to Assess Employment Tax for the pre-merger tax liability of should read as follows:

" . (EIN ) formerly known as (EIN ) formerly known as . (EIN ) as successor by way of merger to (EIN )."

The EIN of , , should be entered in the upper right corner of the SS-10.

LINDA R. DETTERY District Counsel

By:

PETER J. LABELLE Assistant District Counsel

Noted:

LINDA R. DETTERY District Counsel

cc: Michael P. Corrado (by e-mail) Assistant Regional Counsel (TL)

Paulette Segal (by e-mail) Assistant Regional Counsel (LC)

Mary Helen Weber (by e-mail) Assistant Regional Counsel (LC)

Theodore R. Leighton Assistant District Counsel